

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 North 5th Street
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

East Kansas Chemical
616 Locust Street
P.O. Box 725
Wellsville, KS 66092

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Docket No. FIFRA 07-2004-0125

CONSENT AGREEMENT AND
FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated on or about February 13, 2004, pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §136l, when the United States Environmental Protection Agency ("Complainant" or "EPA") issued a Complaint and Notice of Opportunity for Hearing ("Complaint") to East Kansas Chemical ("Respondent").

The Complaint charged Respondent with violating Section 12(a)(1)(C) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) and § 136j(a)(1)(E), which state that it shall be unlawful for any person to distribute or sell any misbranded pesticide or any registered pesticide, the composition of which differed at the time of its distribution or sale from the composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. §136a.

Subsequently, Complainant and Respondent entered into negotiations in an attempt to resolve the Complaint. This Consent Agreement and Final Order is the result of these negotiations and represents settlement of this Complaint.

CONSENT AGREEMENT

It is hereby agreed, and accepted by Respondent, that:

1. This Consent Agreement is being entered into by the Parties in full settlement of, and release from, all FIFRA civil penalties that might have attached as a result of the allegations in the Complaint. Respondent has read the Consent Agreement, finds it reasonable, and consents to its issuance and its terms and explicitly waives its right to request a hearing on the Complaint, the Consent Agreement, or the Final Order.

2. Respondent admits the jurisdictional allegations of the Complaint and admits the facts stipulated in this Consent Agreement.

3. Respondent neither admits nor denies the violations of Section 12(a)(1)(C) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) and §136j(a)(1)(E) as set forth in the Complaint and neither admits nor denies that such violations are violations of Section 14 of FIFRA, 7 U.S.C. § 136l.

4. The EPA, the Kansas Department of Agriculture, and the Kansas Department of Health and the Environment designed and approved the "Land Application Work Plan" (the "Plan") (Attached) for proper disposal/management of the glyphosate product subject to this action (the "Glyphosate") in a manner that ensures protection of both the environment and public health. Respondent shall follow the procedures set forth in the Plan for the disposal/management of the Glyphosate through land application, including the "Proposed Description of Work" and the "Record Keeping" provisions. All disposal/management of the Glyphosate through land application shall be conducted under contract with the parties listed in part three of the Plan, entitled "Proposed Land Application Site."

5. Prior to any disposal/management of the Glyphosate through land application, Respondent must make a written request for vacation of the Stop Sale, Use, or Removal Order that was issued by EPA on July 25, 2003 (the "SSURO"). The request for vacation of the SSURO shall be made to Luetta Flournoy, Branch Chief, Pesticides Branch, EPA, 901 North 5th Street, Kansas City, Kansas 66101. A copy of the request for vacation of the SSURO shall also be sent to Michael Massey at the same address. Ms. Flournoy will approve vacation of the SSURO only for the disposal/management of the Glyphosate in accordance with the Plan. Written confirmation of the vacation of the SSURO will be mailed to East Kansas Chemical. East Kansas Chemical may implement the terms described in the Plan only after it receives written confirmation of vacation of the SSURO from EPA.

6. Respondent shall retain possession, custody, and control of the Glyphosate at all times.

7. Within 30 days of completion of all land application events, Respondent shall provide EPA with a notarized and signed affidavit certifying that land application of the Glyphosate has been accomplished in accordance with the Plan.

8. All work to be performed under the Plan shall be completed no later than September 1, 2005.

9. Respondent, in settlement of the allegations set forth in the Complaint, shall pay by cashier's or certified check, a civil penalty, for the violations cited therein, in the amount of twenty six thousand four hundred dollars (\$26,400), payable to the "Treasurer, United States of America," and such check shall be mailed to:

EPA-Region VII (Regional Hearing Clerk)
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The payment shall be identified as **In the Matter of East Kansas Chemical**. A copy of the check shall be forwarded to Michael Massey, Office of Regional Counsel, Region VII, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

10. Payment must be received at the above address on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). The effective date of this Final Order shall be the date on which it is signed by the Regional Judicial Officer.

11. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the United States Department of Justice for collection.

12. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

13. Respondent certifies by signing this Consent Agreement and Final Order that it is presently, and shall remain, in compliance with FIFRA, 7 U.S.C. 136 et seq., and all regulations promulgated thereunder.

14. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the EPA.

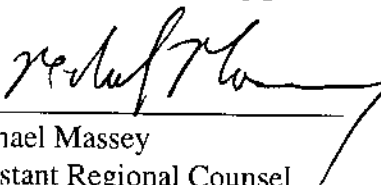
15. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

16. Each signatory of this Consent Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

17. This executed Consent Agreement and Consent Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:


UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
Michael Massey
Assistant Regional Counsel

Date: 5/26/04

RESPONDENT:

East Kansas Chemical

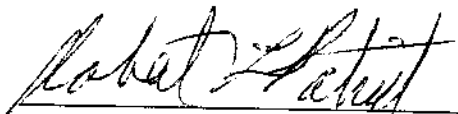
By: 
Title: MANAGER

Date: 5-18-04

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above consent agreement, effective immediately.

IT IS SO ORDERED.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: June 3, 2014

IN THE MATTER OF East Kansas Chemical, Respondent
Docket No. FIFRA-07-2004-0125

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Michael Massey
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Kenny O'Connor
East Kansas Chemical
616 Locust Street
P.O. Box 725
Wellsville, Kansas 66092

Dated: 6/7/04


Kathy Robinson
Regional Hearing Clerk